IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4967 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MOHAMMAD YUSUF ISMAIL MEMON

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4967 of 2002

MR AR SHAIKH for Petitioner No. 1

MR HH PATEL Ld. AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 08/07/2002

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India the petitioner-detenu has challenged the legality and validity of the detention order passed by the Police Commissioner, Surat City, dated 27.3.2002 in exercise of powers vested under him by

sub-section 3(2) of the Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act').

The petitioner has been branded as bootlegger as he was found involved in one criminal case registered with Rander Police Station being CR NO. 45/2002 punishable under the Bombay Prohibition Act. The petitioner was arrested for the offence with co-accused and was found responsible for possessing and transporting prohibited country made foreign liquor and Beer Tin worth Rs. 10,780/. In the incident one auto rickshaw and Mobile Phone were also seized. For recording the subjective satisfaction, the detaining authority has considered the statements of two unnamed witnesses recorded on 24.3.2002. The offence was registered on 12.1.2002. So, it can be said that there were no statements before the sponsoring authority till 24.3.2002.

Ld. Counsel has taken me through the memo of petition and the legality and validity of the order of detention assailed on number of grounds, however, the argument is focussed mainly on two grounds. The first point argued before this Court is that on such a solitary incident, a person cannot be detained or branded as dangerous person. The powers vested with the detaining authority should not be exercised unless it is found that the activities of the proposed detenu is absolutely prejudicial to the maintenance of public order and such activities needs immediate prevention.

The second point argued by the learned counsel is that the order under challenged is passed mechanically and without proper application of mind because the sponsoring authority has recorded the statements of two unnamed witnesses on 24.3.2002 and the same were before the detaining authority on 26.3.2002. The order of detention is passed on 27.3.2002. It is argued that the ratio of the decision in the case of Kalidas C. Kahar vs. State of Gujarat & Ors., reported in 1993(2) GLR P. 1659 and the subsequent decision in the case of Ranubhai Bhikhabhai Bharwad (Vekaria) vs. state of Gujarat reported in 2000(3) GLR p. 2696 would be squarely applicable to the facts of this case.

These submissions are acceptable being legal. While recording the subjective satisfaction, the detaining authority has not considered the vital aspects of Constitutional safe-guards provided in Article 22(5) of the Constitution of India and, the order of detention

is found unsustainable. Therefore, the same shall have to be quashed and set aside.

In the result, this petition is allowed. The impugned order of detention dated 27.3.2002 passed by Police Commissioner, Surat city is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if he is not required to be detained in any other case. Rule is made absolute. Direct service permitted.

(C.K. BUCH, J.)
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